employer's negligence, *Wiseman* v. *Carter etc. Co.* (1916) 100 Neb. 584; 160 N. W. 895; *Thompson* v. *United Lab. Co.* (1915) 221 Mass. 276, 108 N. E. 1042, or on his breach of statutory duty. *Jellico etc. and Co.* v. *Walls* (1914) 160 Ky. 730, 170 S. W. 19. But the courts are in conflict concerning a recovery for occupational diseases under Workmen's Compensation Acts. See *Miller* v. *American etc. Co.* (1916) 90 Conn. 349, 97 Atl. 345; Honnold, Workmen's Compensation § 138. Most jurisdictions deny relief whether the statute provides for recovery in case of "accident", *Liondale etc. Works* v. *Riker* (1914) 85 N. J. L. 426, 89 Atl. 929, or of "personal injury", *Adams* v. *Acme etc. Works* (1914) 182 Mich. 157, 148 N. W. 485; *Miller* v. *American etc. Co., supra*; *Industrial Comm.* v. *Brown* (1915) 92 Oh. St. 309, 110 N. E. 744; *contra, Johnson's Case* (1914) 217 Mass. 388, 104 N. E. 735. In England recovery is limited to the diseases specified in the act unless of accidental origin, 5 & 6 Edw. VII. c. 58 § 8. sched. 3; *Eke* v. *Hart-Dyke* [1910] 2 K. B. 677, and since a gradual deterioration from over-work is not an accident within the British statute, there will be no recovery in such a case. *Walker v. Hockney Bros.* (Eng. 1909) 2 Butterworth W. C. C. 20. But the Massachusetts Act requires only a "personal injury," and this having been established, even though the injury is a rare ailment not among recognized vocational diseases, *Hurle's case* (1914) 217 Mass. 223, 104 N. E. 336, there will be a recovery if the employment contributes at all to the disability. *Madden's Case* (1916) 222 Mass. 487, 111 N. E. 379. The objection that no time can be fixed for the occurrence of the injury, *Liondale etc. Works* v. *Riker, supra,* is overcome by regarding it as beginning when the employee becomes unable to work. *Johnson's Case, supra.* These broad holdings would seem to have justified allowing a recovery in the principal case, but in limiting their application the court reached a sound and just conclusion.

MORTGAGES — BANKRUPTCY OF MORTGAGOR — MORTGAGEE'S RIGHT TO RENTS.—A foreclosure sale of realty did not realize enough to satisfy a third mortgage held by the plaintiff. A trustee in bankruptcy of the assets of the mortgagor had collected rents from the mortgaged premises between adjudication and foreclosure. After foreclosure, the plaintiff seeks to have the rents applied to meet the deficiency. *Held,* the mortgagee is entitled to have the rents applied for this purpose. *In re Dooner* v. *Smith* (D. C., D. N. J. 1917) 243 Fed. 984.

Although the mortgagor in possession is entitled to rents, *Teal* v. *Walker* (1884) 111 U. S. 242, 4 Sup. Ct. 420, yet when it appears that the proceeds from a foreclosure sale of the mortgaged premises will not be sufficient to satisfy the mortgage debt, the mortgagee may have a receiver appointed to collect and apply the rents from the date of application to the satisfaction of his claim. 2 Jones, Mortgages (7th ed.) § 670. The question presented in the instant case is whether the mortgagee is entitled to have the rents applied to the satisfaction of his claim even though no receiver for his benefit has been appointed. One court has held a mere demand by the mortgagee is sufficient to entitled him to the rents, *In re Bennett* (C. C. 1877) 3 Fed. Cas. No. 1313, while there is authority for holding the appointment of a receiver for the benefit of the mortgagee to be essential. *Hunter* v. *Hays* (C. C. 1877) 12 Fed. Cas. No. 6906; see *In re Foster* (D. C. 1872) 9 Fed. Cas. No. 4963, aff'd *Foster* v. *Rhodes* (C. C. 1874) 9 Fed. Cas. No. 4981. These latter cases, however, are based on the

theory that since the possession of the trustee is for the benefit of the general creditors, the latter will be entitled to the rents, unless a receiver for the benefit of the mortgagee is appointed, and it would seem, therefore, that the position of these courts is unsound. The trustee is an officer of the court, *Crosby* v. *Spear* (1904) 98 Me. 542, 57 Atl. 881, invested with possession of the property by operation of law, 30 Stat. 565, 9 U. S. Comp. Stat. (1916) § 9654, and he has other functions besides protecting the general creditors. *In re Industrial, etc. Co.* (D. C. 1908) 163 Fed. 390. On principle, the trustee as a court officer should make the most equitable disposition of the rent without the interposition of the receiver for the benefit of the mortgagee, *In re Industrial, etc. Co., supra*; see *In re Torchia* (C. C. A. 1911) 188 Fed. 207, and, therefore, the holding of the instant case is sound.

NEW TRIAL—GRANTING UPON CONDITION—NEWLY DISCOVERED EVIDENCE. —After verdict for the plaintiff, defendant moved for a new trial on the ground of newly discovered evidence, submitting an affidavit by one of the plaintiff's important witnesses at the first trial to the effect that he, the affiant, had then committed perjury. It appeared that this witness and his family had been supported financially by the defendant since the trial and that the witness has left the state under pressure of indictment by defendant. *Held*, two judges dissenting, a new trial would be granted upon condition that plaintiff be allowed to read the former testimony of this witness before a submission of the subsequent affidavit. *Fried* v. *New York N. H. & H. R. R.* (2nd Dept. 1917) 178 App. Div. 309, 165 N. Y. Supp. 495.

The granting of a motion for a new trial, where it is not sought as a statutory right or on the ground of error made in the law, lies within the discretion of the trial judge, whether it be sought on the ground that the verdict is contrary to the evidence, *Thompson* v. *Warren* (1903) 118 Ga. 644, 45 S. E. 912, or on the ground either of interference with the jury, *Chicago Junction Ry.* v. *McGrath* (1903) 107 Ill. App. 100, aff'd. 203 Ill. 511, 68 N. E. 69, or of newly discovered evidence. *Parsons* v. *Lewiston, etc. Ry.* (1902) 96 Me. 503, 52 Atl. 1006; *Whitehead* v. *Breckenridge* (1904) 5 Ind. Terr. 133, 82 S. W. 698; *Bunker* v. *United Order of Forester* (1906) 97 Minn. 361, 107 N. W. 392. Unless the trial judge has evidently abused his discretion in refusing a motion for a new trial so that a miscarriage of justice is a very probable result, such a refusal will not be reversed by the higher court. *Smith* v. *Bailey* (1874) 26 Oh. St. 1; *Godfrey* v. *Godfrey* (1906) 127 Wis. 47, 106 N. W. 814. The granting of a new trial, as in the principal case, being discretionary, is a favor and not a right. It has been held, therefore, that a new trial can be granted on such conditions as will insure substantial justice to both parties to the suit. *Brenzinger* v. *American Exch. Bank of Duluth* (1900) 19 Ohio C. C. 536; *Fry* v. *Stowers* (1900) 98 Va. 417, 36 S. E. 482. In the principal case, there were special circumstances from which the court as a whole inferred that the perjured witness was under the control of the defendant and had left the state with its connivance, and further it had not been determined by a jury whether the testimony given at the trial was false or whether the subsequent affidavit seemingly made while the witness was under the control of the defendant was false. The fact that § 830 of N. Y. Code of Civ. Proc. does not provide for the admissibility of former testimony in such a